

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :

v. : NO. 3:09CV236(EBB)
NO. 3:08CR173(EBB)

JOSE MANUEL GOMEZ ESPINAL:

RULING ON MOTION TO VACATE,
SET ASIDE OR CORRECT SENTENCE

Following his plea of guilty to a violation of 8 U.S.C. § 1326(a), reentry of a removed alien, petitioner was sentenced by the court to a twenty-four month term of imprisonment to be followed by a supervised release term of three years. Petitioner has brought the pending motion for a writ of habeas corpus alleging his counsel was ineffective for failing to argue that the absence of a fast-track program sentencing option available in certain districts of the United States but not in this district creates unwarranted sentencing disparity and that the court and the government committed error by precluding such an option for him.

These early disposition programs may be authorized by the Attorney General of the United States and the United States Attorney in certain districts facing a large number of cases in a certain category when failure to adopt such a program would strain prosecutorial and judicial resources. The District of Connecticut has no such program. The Second Circuit Court of Appeals has held that “no unwarranted disparity is created when one district adopts a policy needed to facilitate the administration of justice in the district” and “disparities created by the exercise of prosecutorial discretion are not ‘unwarranted’.” United States v. Mejia, 461 F.3d 158, 162 (2d Cir. 2006) citing United States v. Bonnet-Grullon, 212 F.3d 692 (2d Cir. 2000).

Counsel was, therefore, not ineffective for failing to advance an argument foreclosed by Mejia nor did the court and the government erroneously fail to apply such an option to his case.

Petitioner also alleges that the court failed to consider the sentencing factors set forth under 18 U.S.C. § 3553. Such a claim should be pursued by direct appeal and petitioner's failure to do so renders his petition, on that claim, procedurally barred.

The motion [Doc. No. 1] is denied.

SO ORDERED.

ELLEN BREE BURNS, SENIOR JUDGE
UNITED STATES DISTRICT COURT

Dated at New Haven, CT, this ____ day of September, 2009.